

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION

APPLETON PAPERS INC. and
NCR CORPORATION,

Plaintiffs,

v.

Case No. 08-CV-00016-WCG

GEORGE A. WHITING PAPER COMPANY,
P.H. GLATFELTER COMPANY,
MENASHA CORPORATION,
GREEN BAY PACKAGING, INC.,
INTERNATIONAL PAPER COMPANY,
LEICHT TRANSFER & STORAGE COMPANY,
NEENAH FOUNDRY COMPANY,
NEWPAGE WISCONSIN SYSTEM INC.,
THE PROCTER & GAMBLE PAPER
PRODUCTS COMPANY,
WISCONSIN PUBLIC SERVICE CORP.,
CITY OF APPLETON,
CITY OF DE PERE,
CITY OF GREEN BAY,
CITY OF KAUKAUNA,
BROWN COUNTY,
GREEN BAY METROPOLITAN
SEWER DISTRICT,
HEART OF THE VALLEY METROPOLITAN
SEWER DISTRICT,
NEENAH-MENASHA SEWERAGE
COMMISSION,
VILLAGE OF KIMBERLY,
VILLAGE OF WRIGHTSTOWN,
WTM I COMPANY, and
U.S. PAPER MILLS CORPORATION,

Defendants.

**DEFENDANT'S, GREEN BAY PACKAGING, INC., ANSWER TO FIFTH AMENDED
COMPLAINT AND COUNTERCLAIM**

Defendant Green Bay Packaging, Inc., (hereafter "GBP") by its attorneys, von Briesen & Roper, s.c, provides the following answer, affirmative defenses, and counterclaim to the Plaintiffs' Fifth Amended Complaint:

ANSWER

1. Answering paragraph 1, GBP admits these averments.
2. Answering paragraph 2, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.
3. Answering paragraph 3, GBP admits that it entered into a tolling agreement with API and NCR that has since been terminated by API and NCR, but is without knowledge or information sufficient to form a belief as to the truth of the remaining averments.
4. Answering paragraph 4, GBP admits that the parties disagree about their respective shares of the Lower Fox River cleanup costs and damages, but is without knowledge or information sufficient to form a belief as to the truth of the remaining averments.
5. Answering paragraph 5, GBP admits these averments.
6. Answering paragraph 6, GBP admits that venue is proper in this District, but is without knowledge or information sufficient to form a belief as to the truth of the remaining averments.

PARTIES

7. Answering paragraph 7, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

8. Answering paragraph 8, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

9. Answering paragraph 9, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

10. Answering paragraph 10, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

11. Answering paragraph 11, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

12. Answering paragraph 12, GBP admits these averments.

13. Answering paragraph 13, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

14. Answering paragraph 14, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

15. Answering paragraph 15, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

16. Answering paragraph 16, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

17. Answering paragraph 17, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

18. Answering paragraph 18, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

19. Answering paragraph 19, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

20. Answering paragraph 20, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

21. Answering paragraph 21, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

22. Answering paragraph 22, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

23. Answering paragraph 23, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

24. Answering paragraph 24, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

25. Answering paragraph 25, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

26. Answering paragraph 26, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

27. Answering paragraph 27, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

28. Answering paragraph 28, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

29. Answering paragraph 29, GBP admits that the Complaint concerns PCB contamination of the Lower Fox River, but is without knowledge or information sufficient

to form a belief as to the truth of the remaining averments.

30. Answering paragraph 30, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

31. Answering paragraph 31, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

32. Answering paragraph 32, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

33. Answering paragraph 33, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

34. Answering paragraph 34, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

35. Answering paragraph 35, GBP admits to operating a mill located in Green Bay, Wisconsin, but denies that PCBs were released from that mill into the Lower Fox River Site during the time frame identified in this paragraph.

36. Answering paragraph 36, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

37. Answering paragraph 37, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

38. Answering paragraph 38, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

39. Answering paragraph 39, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

40. Answering paragraph 40, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

41. Answering paragraph 41, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

42. Answering paragraph 42, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

43. Answering paragraph 43, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

44. Answering paragraph 44, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

45. Answering paragraph 45, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

46. Answering paragraph 46, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

47. Answering paragraph 47, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

48. Answering paragraph 48, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

49. Answering paragraph 49, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

50. Answering paragraph 50, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

51. Answering paragraph 51, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

52. Answering paragraph 52, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

53. Answering paragraph 53, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

54. Answering paragraph 44, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

55. Answering paragraph 55, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

56. Answering paragraph 56, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

57. Answering paragraph 57, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

58. Answering paragraph 58, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

59. Answering paragraph 59, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

60. Answering paragraph 60, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

61. Answering paragraph 61, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

62. Answering paragraph 62, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

63. Answering paragraph 63, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

64. Answering paragraph 64, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

65. Answering paragraph 65, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

66. Answering paragraph 66, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

COUNT I – CLAIM UNDER CERCLA § 107

67. In response to Paragraph 67 of Plaintiffs' Fifth Amended Complaint, GBP hereby incorporates, as if fully rewritten, its responses to the allegations contained in paragraphs 1 through 66 of the Fifth Amended Complaint.

68. Answering paragraph 68, the allegations in this paragraph set forth a legal conclusion, which is denied.

69. Answering paragraph 69, the allegations in this paragraph set forth a legal conclusion, which is denied.

70. Answering paragraph 70, the allegations in this paragraph set forth a legal conclusion, which is denied.

71. Answering paragraph 71, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

72. Answering paragraph 72, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

73. Answering paragraph 73, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

74. Answering paragraph 74, the allegations in this paragraph set forth a legal conclusion, which is denied.

75. Answering paragraph 75, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

76. Answering paragraph 76, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

77. Answering paragraph 77, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

78. Answering paragraph 78, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

79. Answering paragraph 79, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

80. Answering paragraph 80, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

81. Answering paragraph 81, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

82. Answering paragraph 82, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

83. Answering paragraph 83, GBP is without knowledge or information sufficient

to form a belief as to the truth of these averments.

84. Answering paragraph 84, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

85. Answering paragraph 85, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

86. Answering paragraph 86, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

87. Answering paragraph 87, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

88. Answering paragraph 88, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

89. Answering paragraph 89, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

90. Answering paragraph 90, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

91. Answering paragraph 91, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

92. Answering paragraph 92, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

93. Answering paragraph 93, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

94. Answering paragraph 94, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

95. Answering paragraph 95, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

96. Answering paragraph 96, the allegations in this paragraph set forth a legal conclusion, which is denied.

97. Answering paragraph 97, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

98. Answering paragraph 98, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

99. Answering paragraph 99, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

100. Answering paragraph 100, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

101. Answering paragraph 101, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

102. Answering paragraph 102, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

103. Answering paragraph 103, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

104. Answering paragraph 104, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

105. Answering paragraph 105, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

106. Answering paragraph 106, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

107. Answering paragraph 107, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

108. Answering paragraph 108, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

109. Answering paragraph 109, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

110. Answering paragraph 110, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

111. Answering paragraph 111, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

112. Answering paragraph 112, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

113. Answering paragraph 113, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

114. Answering paragraph 114, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

115. Answering paragraph 115, GBP admits these averments.

116. Answering paragraph 116, GBP admits these averments.

117. Answering paragraph 117, the allegations in this paragraph set forth a legal

conclusion, which is denied.

118. Answering paragraph 118, GBP admits these averments.

119. Answering paragraph 119, GBP admits these averments.

120. Answering paragraph 120, the allegations in this paragraph set forth a legal conclusion, which is denied.

121. Answering paragraph 121, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

122. Answering paragraph 122, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

123. Answering paragraph 123, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

124. Answering paragraph 124, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

125. Answering paragraph 125, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

126. Answering paragraph 126, GBP is without knowledge or information sufficient to form a belief as to the truth of these averment that papermaking activities conducted by GBP at its mill resulted in the release of PCBs into the Lower Fox River Site, and affirmatively alleges that any PCB releases were caused API, NCR and other named and unnamed parties in their respective wastewater discharges to the Lower Fox River. The remaining allegations in this paragraph set forth a legal conclusion, which is denied.

127. Answering paragraph 127, the allegations in this paragraph set forth a legal conclusion, which is denied.

128. Answering paragraph 128, the allegations in this paragraph set forth a legal conclusion, which is denied.

129. Answering paragraph 132, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

130. Answering paragraph 132, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

131. Answering paragraph 132, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

132. Answering paragraph 132, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

133. Answering paragraph 133, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

134. Answering paragraph 134, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

135. Answering paragraph 135, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

136. Answering paragraph 136, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

137. Answering paragraph 137, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

138. Answering paragraph 138, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

139. Answering paragraph 139, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

140. Answering paragraph 140, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

141. Answering paragraph 141, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

142. Answering paragraph 142, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

143. Answering paragraph 143, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

144. Answering paragraph 144, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

145. Answering paragraph 145, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

146. Answering paragraph 146, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

147. Answering paragraph 147, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

148. Answering paragraph 148, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

149. Answering paragraph 149, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

150. Answering paragraph 150, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

151. Answering paragraph 151, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

152. Answering paragraph 152, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

153. Answering paragraph 153, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

154. Answering paragraph 154, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

155. Answering paragraph 155, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

156. Answering paragraph 156, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

157. Answering paragraph 157, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

158. Answering paragraph 158, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

159. Answering paragraph 159, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

160. Answering paragraph 160, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

161. Answering paragraph 161, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

162. Answering paragraph 162, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

163. Answering paragraph 163, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

164. Answering paragraph 164, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

165. Answering paragraph 165, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

166. Answering paragraph 166, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

167. Answering paragraph 167, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

168. Answering paragraph 168, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

169. Answering paragraph 169, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

170. Answering paragraph 170, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

171. Answering paragraph 171, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

172. Answering paragraph 172, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

173. Answering paragraph 173, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

174. Answering paragraph 174, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

175. Answering paragraph 175, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

176. Answering paragraph 176, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

177. Answering paragraph 177, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

178. Answering paragraph 178, the allegations in this paragraph set forth a legal conclusion, which is denied.

179. Answering paragraph 179, the allegations in this paragraph set forth a legal conclusion, which is denied.

180. Answering paragraph 180, the allegations in this paragraph set forth a legal conclusion, which is denied.

181. Answering paragraph 181, the allegations in this paragraph set forth a legal conclusion, which is denied.

182. Answering paragraph 182, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

183. Answering paragraph 183, the allegations in this paragraph set forth a legal conclusion, which is denied.

COUNT II – CLAIM UNDER CERCLA § 113

184. In response to Paragraph 184 of Plaintiffs' Fifth Amended Complaint, GBP hereby incorporates, as if fully rewritten, its responses to the allegations contained in paragraphs 1 through 183 of the Fifth Amended Complaint.

185. Answering paragraph 185, the allegations in this paragraph set forth a legal conclusion, which is denied.

186. Answering paragraph 186, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

187. Answering paragraph 187, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

188. Answering paragraph 188, the allegations in this paragraph set forth a legal conclusion, which is denied.

COUNT III – CLAIM FOR DECLARATORY RELIEF

189. In response to Paragraph 189 of Plaintiffs' Fifth Amended Complaint, GBP hereby incorporates, as if fully rewritten, its responses to the allegations contained in paragraphs 1 through 188 of the Fifth Amended Complaint.

190. Answering paragraph 190, GBP is without knowledge or information sufficient to form a belief as to the truth of these averments.

191. Answering paragraph 191, GBP denies that it is liable to plaintiffs as alleged, but is without knowledge or information sufficient to form a belief as to the truth of the remaining averments.

192. Answering paragraph 192, GBP denies these averments.

193. Answering paragraph 193, the allegations in this paragraph set forth a legal conclusion, which is denied.

AFFIRMATIVE DEFENSES

194. Plaintiffs' claims fail to state a claim upon which relief may be granted.

195. Plaintiffs' claims are barred in whole or in part by the applicable statute of limitations.

196. Plaintiffs' claims are barred in whole or in part by the doctrine of unclean hands in that harm to the environment is the result of the negligence of Plaintiffs and/or other persons.

197. Plaintiffs' claims are barred by the doctrine of laches and/or waiver.

198. Plaintiffs have failed to comply with the requirements of the National Contingency Plan and, therefore, cannot be reimbursed for expenses they may have incurred or may later incur.

199. Plaintiffs' damages, if any, are the result of their own acts or omissions over which GBP has no control.

200. GBP's liability, if any, is the result of acts of a Fourth persons within the meaning of 42 U.S.C. § 9607(b)(3) over whom GBP has no control.

201. Plaintiffs' claims for recovery of response costs are barred in that a reasonable basis exists for allocation of liability in that the alleged environmental harm was

caused entirely by the production or reprocessing of carbonless paper in which GBP was not directly or indirectly involved.

202. The contribution to the PCB contamination of the Lower Fox River through GBP, if any, is so infinitesimal such that any allocation of liability to GBP would be inequitable.

203. Pursuant to the Small Business Liability Relief and Brownfields Revitalization Act and Section 107(o) of CERCLA, 42 U.S.C. §9607(o), GBP is exempt from liability as a de micromis party, if it has any liability at all.

204. Plaintiffs' claims are barred because they are not ripe for adjudication and/or Plaintiffs lack standing to assert them.

205. Plaintiffs are not the real party in interest to make a claim for natural resource damages.

206. Plaintiffs have failed to name all necessary and indispensable parties.

WHEREFORE, Defendant Green Bay Packaging, Inc. prays that all of the claims asserted in Plaintiffs' Fifth Amended Complaint be dismissed, with prejudice, at Plaintiffs' costs, and that this Court grant GBP such other and further relief as this Court deems just and proper, including an award of GBP's attorney's fees, expenses, disbursements and costs.

COUNTERCLAIM

Defendant, Green Bay Packaging, Inc., ("GBP"), by and through its undersigned counsel and, to the extent Plaintiffs' Fifth Amended Complaint states a claim, sets forth its counterclaims as follows:

1. Defendant, Green Bay Packaging, Inc., ("GBP"), is a Wisconsin

Corporation with its principal place of business in Green Bay, Wisconsin.

2. Plaintiff, Appleton Papers, Inc. ("API"), is a Delaware corporation with its principal place of business in Appleton, Wisconsin.

3. Plaintiff, NCR Corporation, is a Maryland corporation with its principal place of business in Dayton, Ohio.

4. This Court has jurisdiction over the subject matter of this counterclaim pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and the Authorization Act of 1986, 42 U.S.C. § 9601, *et seq.* ("CERCLA"), 28 U.S.C. § 1331, and supplemental jurisdiction.

5. Venue is proper in this District pursuant to 42 U.S.C. § 9613(b) and 28 U.S.C. § 1391(b), because the events giving rise to the claims in this Counterclaim and in Plaintiffs' Fifth Amended Complaint, including the alleged releases of hazardous substances, occurred in this District. In addition, the Lower Fox River and Plaintiffs' relevant businesses or operations are/were located entirely within this District.

6. The Fifth Amended Complaint alleges claims for liability against GBP, which claim GBP denies.

7. Plaintiffs are liable for response costs or damages incurred, or to be incurred, for PCB contamination of the Lower Fox River Site as those terms are defined in Plaintiffs' Fifth Amended Complaint.

8. To the extent that the Fifth Amended Complaint states a claim for liability for response costs or damages at the Lower Fox River Site, and results in a judgment against Defendant Green Bay Packaging, Inc., GBP is entitled to statutory and/or common law contribution, cost recovery, and/or indemnity from Plaintiffs.

WHEREFORE, GBP demands judgment against Plaintiffs dismissing the Fifth Amended Complaint on the merits or, in the event judgment is rendered against Green Bay Packaging, Inc., for judgment against Plaintiffs for costs and damages properly allocable to them, for such other and further relief as this Court deems just and proper, and for its attorneys' fees, costs, disbursements and expenses of this action.

Dated this 30th day of June, 2008.

von BRIESEN & ROPER, s.c.

By: s/Patrick L. Wells
David J. Edquist, SBN 1010243
Christopher P. Riordan, SBN 1018825
Patrick L. Wells, SBN 1023290
Attorneys for Defendant, Green Bay
Packaging, Inc.

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